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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

TYCHICUS STANISLAS,

Defendant and Appellant.

D059986

(Super. Ct. No. SCD226061)

APPEAL from a judgment of the Superior Court of San Diego County, Roger W. Krauel, Judge. Affirmed.

A jury convicted Tychicus Stanislas of one count of criminal threats (Pen. Code, § 422). His motion for new trial was denied and he was sentenced to the low term of 16 months for this offense plus an additional eight months for an unrelated conviction.

Stanislas appeals contending his trial counsel was ineffective for failing to call the defendant's wife as a witness. The trial court, after hearing testimony on the issue of ineffective assistance of counsel, denied a motion for new trial. We will reject appellant's contention and affirm.

STATEMENT OF FACTS

Since Stanislas does not challenge either the admissibility or the sufficiency of the evidence to support his conviction we will set forth only a brief statement of facts regarding the offense in order to provide context for our discussion which follows.

The offense in this case arose from an encounter between Stanislas and Cassandra Mathews, who was at the time a mall security officer. Mathews had a previous encounter with Stanislas several weeks before the offense at a work furlough facility where Mathews was employed as a safety monitor.

In Mathew's previous contact with Stanislas, he was an inmate of a work furlough facility. In her role as a safety monitor, Mathews "wrote up" Stanislas for a disciplinary violation. Stanislas remained at the facility for two weeks after the disciplinary event. Whenever he saw Mathews he glared at her, but did not say anything to her.

On the afternoon of February 4, 2010, Mathews was working as a mall security officer. While she was making a purchase at a grocery store, she observed Stanislas nearby. He shouted at her and called her a "bitch." She paid for her items and left the store. Stanislas followed her and shouted various threats. Mathews called for backup. Before her backup arrived, both Stanislas and his wife, Ameerah Pargo, repeatedly called Mathews names and threatened to harm her.

Jason Fualau, another security officer arrived and heard the threats by both Stanislas and Pargo. Stanislas and Pargo eventually left, but as they left Stanislas continued to threaten Mathews. Mathews then called 9-1-1.

The New Trial Motion

Following his conviction for making criminal threats Stanislas brought a motion for new trial based on alleged ineffective assistance of his retained trial counsel.

Stanislas retained new counsel to present that motion. At the hearing on the motion Stanislas, Pargo and trial counsel, Michael Pedretti, all testified. In addition, the court considered declarations filed by Stanislas and Pargo.

The basis of the claim of ineffective assistance was the allegation trial counsel failed to call Pargo, who was by then estranged from Stanislas, as a witness and that Stanislas was prejudiced by the failure to present such evidence.

Trial counsel testified that he had 19 years experience before this case. He said he was prepared for trial and had conducted discovery. He represented Stanislas at the preliminary hearing and he had spoken with Pargo at least twice when she accompanied Stanislas to court. Counsel testified he decided not to call Pargo as a witness long before trial. He found her to be a hothead, abrasive and argumentative, and he did not consider her to be a good witness. At his client's request, counsel attempted to contact Pargo prior to trial but was unable to get her to respond to his calls. He listed Pargo as a possible witness on the day of trial in case there might be a reason to call Pargo. Counsel also testified that a couple of days before trial Stanislas told him, "[j]ust don't bother with her."

The evidence offered by Stanislas generally contradicted trial counsel. At the end of the evidence and argument the court found Stanislas had failed to meet his burden to show ineffective assistance of counsel and denied his new trial motion.

DISCUSSION

Stanislas contends he has met his burden to show that trial counsel was ineffective. Although he recognizes that trial counsel testified he made a tactical decision not to call Pargo because she would be a poor witness, he urges this court to "reject" trial counsel's testimony and accept his view that Pargo was not called because counsel was unprepared. As we will discuss, our role is not to substitute our assessment of the credibility of witnesses for that of the trial court. On this record we will find substantial evidence supports the trial court's implied finding that counsel's decision to reject Pargo as a witness was a legitimate tactical decision and does not amount to failure to provide adequate assistance to Stanislas. Accordingly, we will not discuss the allegations of prejudice advanced by Stanislas.

1. Legal Principles

Under the Sixth Amendment, a defendant in a criminal case is entitled to the effective assistance of counsel. Where the defendant claims that he or she was denied such assistance, the defendant bears the burden to prove the performance of counsel fell below the appropriate level of competence and that such failure caused the defendant prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 686, 688 (*Strickland*).)

The *Strickland* opinion requires that reviewing courts presume that trial counsel's decisions were proper. The court recognized that trial counsel are called upon to make tactical choices in how to present their case and that such choices by counsel should be given deference by reviewing courts. (*Strickland, supra*, 466 U.S. at pp. 691-694; *People v. Hinton* (2006) 37 Cal.4th 839, 876; *People v. Scott* (1997) 15 Cal.4th 1188, 1212.)

2. Analysis

As we have noted, after hearing the evidence on the motion for new trial, the court denied the motion, finding that Stanislas had not carried his burden to show ineffective assistance of counsel. We infer from that statement that the court must have credited the testimony of trial counsel. Once we accept such implied finding of credibility, we are presented with a case in which there is no evidence of ineffective assistance. Stanislas apparently recognizes as much since his argument is that we should reject trial counsel's testimony.

The first question we must address then is whether there is substantial evidence to support the implied finding of credibility of trial counsel. Like all other substantial evidence issues we review the record in the light most favorable to the trial court's decision. We draw all reasonable inferences in favor of that decision and we do not make credibility decisions nor do we reweigh the evidence. (*People v. Johnson* (1980) 26 Cal.3d 557, 576.)

Applying the appropriate standard of review, we are satisfied the trial court could reasonably conclude trial counsel's decision not to call Pargo as a witness was a valid

tactical judgment on his part. Counsel was prepared for trial, had represented Stanislas through the preliminary hearing and was very familiar with the case. He talked to Pargo and concluded she would not be a useful witness and testified that Stanislas told him to forget about her.

Pargo was one of the persons involved in threatening the victim. She was heard screaming at and threatening the victim. Added to such facts was trial counsel's assessment that Pargo was an abrasive, aggressive hothead. From those facts a reasonable trial attorney could conclude his case was better without Pargo and the risks she might impose. Thus, although there was conflicting evidence at the motion for new trial, it is clear the court rejected that evidence and accepted the version offered by trial counsel. Accordingly, we are satisfied Stanislas has not met his burden to show that trial counsel was ineffective.

DISPOSITION

The judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

IRION, J.